



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 17, 1992

Mr. Kevin Kapitan
Assistant City Attorney
Police Legal Advisor
Fort Worth Police Department
350 Belknap Street
Fort Worth, Texas 76102

OR92-415

Dear Mr. Kapitan:

The City of Fort Worth Police Department (the "department") asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16191.

The department received an Open Records Act request for all records relating to the application of Kevin Richard Bowling for employment as a Fort Worth police officer. The department has furnished for our review documents including: page 3 of a Kevin Bowling "background summary" (Exhibit B); a pre-employment polygraph report (Exhibit C); pages 2-5 of a Kevin Bowling "background summary" (Exhibit D); and several completed reference questionnaires furnished by the applicant's third-party references (Exhibit E). The department claims that this information is excepted from required public disclosure by Open Records Act sections 3(a)(1) and 3(a)(11).

Open Records Act section 3(a) states that all information in the possession of a governmental body is public information, with the following relevant exceptions:

(1) information deemed confidential by law, either
Constitutional, statutory, or by judicial decision; [and]

....

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

This office has previously ruled that information may be withheld pursuant to section 3(a)(1) on the basis of the informer's privilege. Open Records Decision Nos. 582, 579 (1990), 377 (1983). The entire statement of an informer may be withheld where it would tend to identify him. Open Records Decision No. 434 (1986). Exhibit B and portions of Exhibits D and E refer to certain sensitive information within the informer's privilege which may be withheld pursuant to section 3(a)(1).

You claim that the report of the polygraph examiner, Exhibit C, is excepted from required public disclosure by section 3(a)(1) because V.T.C.S. article 4413(29cc), section 19a, deems this information confidential. Section 19a(e) provides that a governmental agency that acquires information from a polygraph examination shall keep such information confidential. However, pursuant to section 19A(d) the "person for whom a polygraph examination is conducted [such as the Department] . . . may disclose information acquired from the examination to a person [specified in section 19A(c)]." See Open Records Decision No. 430 (1985) (opining that a city government was a "person" within the meaning of section 19A(d)). Section 19A(c)(1) provides that the results of a polygraph examination "may" be disclosed to the examinee or other person specifically designated in writing by the examinee. In the present case, the requester is counsel for the examinee and has been authorized in writing by the examinee to receive all records in the possession of the department which relate to his application for employment; thus the department may disclose the requested information.

You also contend that the polygraph report should be excepted pursuant to section 3(a)(11). Section 3(a)(11) protects from public disclosure advice, opinion, and recommendation on administrative matters, and is intended to encourage open and frank discussion regarding administrative action. Open Records Decision Nos. 582, 574, 565, 563 (1990). Severable factual information is not excepted by section 3(a)(11). *Id.* We conclude that the polygraph examiner's advice and recommendation as reflected on the report, Exhibit C, and as summarized in Exhibit D, is excepted pursuant to section 3(a)(11). However, the remaining portions of Exhibit C do not consist of inter-agency advice or recommendation and therefore are not excepted by section 3(a)(11).

You also contend that the investigative summary, Exhibit D, is excepted by section 3(a)(11). Exhibit D consists of investigative recommendations and certain factual information which for the most part are inextricably intertwined with the advice, opinion, and recommendation of the writer. However, Exhibit D does contain certain severable factual information that should be disclosed to the requester; such as arrest record, driving record, etc. The remaining portions of Exhibit D should be withheld pursuant to section 3(a)(11).

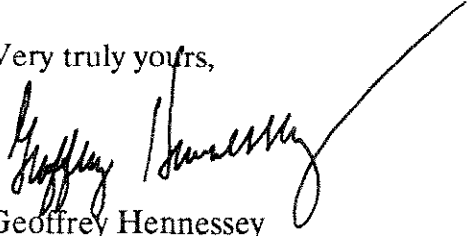
You also claim that the records relating to interviews with the applicant's references, Exhibit E should be withheld pursuant to section 3(a)(11). In Open Records Decision No. 566, at 3-4 (1990), this office held that letters of recommendation written by faculty members concerning a probationary faculty member at a state university were excepted pursuant to section 3(a)(11). This office ruled that section 3(a)(11) excepted from required public disclosure the advice, opinion, and recommendation of third-party references where the governmental body expressly requested the information for use in a deliberative process and the information was not available from another source. *Id.* In the present case the interviews of the third-party references were solicited by the department. These interviews were intended to provide advice, opinion, and recommendation for the deliberative process. Accordingly, we rule that the records relating to the reference interviews are excepted pursuant to section 3(a)(11).

In summary, we conclude that: Exhibits B and E may be withheld in their entirety. Exhibits C and D should be released, however information subject to the informant's privilege and information constituting advice, opinion, and recommendation should be redacted and withheld from Exhibits C and D. For your convenience, we have marked the information which may be withheld on the enclosed copies of Exhibits C and D.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-415.

Very truly yours,



Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/lmm

Enclosures: Marked Documents

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(w/o enclosures)